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SUBJECT: Dillingham Pulling Out of Turkey

Summary:

1. In an April 27 letter to the Ambassador, Dillingham Construction International Inc. (DCII) advised that, due to the judicial system's failure to uphold its rights, it will pull out of Turkey and refrain from bidding on future projects. DCII's experience in Turkish courts creates serious doubts as to whether existing Turkish legislation on access to international arbitration offers any protection for foreign investors. DCII has consented to the Embassy's sharing its letter with Turkish authorities. End Summary

2. DCII and its Turkish partner Kutlutas formed a joint venture to design and construct several large roads in the Izmir/Aydin region. DCII's disputes with Kutlutas over sharing of tax exemptions, use of joint venture assets and other issues began in 1993. DCII took four cases to the ICC Arbitral Tribunal, in accordance with the joint venture agreement. The ICC has ruled in DCII's favor in three cases, with one case pending. Kutlutas refuses to acknowledge decisions and awards made by the ICC Tribunal unless they are brought through the Turkish court system for enforcement. In one of the four cases, the Turkish courts rejected the ICC decision. DCII is pursuing some claims in Turkish courts, but told us that the requirement for plaintiffs to deposit large sums into blocked accounts when launching a court case has been a factor deterring DCII from bringing two of the ICC decisions to the Turkish judicial system.

3. In an April 27 letter to the Ambassador (see para 4 below), DCII provided an update on its litigation, and stated frankly that it intends to leave Turkey and not to bid future projects in the country due to the lack of a level playing field for foreign companies in Turkey's courts. Embassy intends to share this letter with Turkish policymakers to reinforce our longstanding message that many U.S. companies perceive the judicial system to be biased in favor of local firms. We also intend to highlight the damage to investor perceptions by the courts' apparent failure to uphold international arbitration provisions in Turkish law.

4. Begin text April 27, 2004 DCII Letter to Ambassador:

Subject: Dillingham Visit (Dillingham Construction)

Dear Mr. Ambassador:

I, on behalf of Dillingham, wish to thank you for the visit we had with you earlier this month to discuss the problems that Dillingham has been having with the Turkish court system. As discussed at the meeting, Dillingham had one ICC award rejected so far in the Turkish courts. Dillingham has been awarded two other ICC decisions, but is debating whether to bring those awards through the Turkish courts. That decision will be based on the result of the current civil law suit in Turkey that Dillingham has against its partner (called the Ankara 1 case).

The Ankara 1 case decision is critical, not only for Dillingham, but also because of the dangerous precedent it will establish within the Turkish Appeals Court against other foreign companies working in Turkey. The Lower Court in this case ruled that the Joint Venture Agreement, signed between our Turkish partner and Dillingham, is a valid document, and that its language dictates the resolution of the dispute. The Court of Appeals is reversing that Lower Court decision, thereby overriding the Joint Venture Agreement between the partners. Even though our Joint Venture is a 50-50 partnership, the Court of Appeals is

stating that the Turkish partner is the pilot firm, and therefore, can completely control Joint Venture joint bank accounts with only its single signature. The Appeals Court is granting the Turkish partner unilateral authority to drain the joint bank account at his whim, for his convenience, and regardless of the partnership agreement.

You asked what is Dillingham's future in Turkey. I stated at the meeting, and herewith state again, that Dillingham will leave Turkey and never bid another project in Turkey. The principal reason is the lack of a level playing field within the Turkish court system for foreign companies. Dillingham has been in Turkey for over 15 years and feels that from past experience that this assessment is well founded.

We thank you again for the time you spent with us. We wish you success.
Sincerely Richard L. Kunz
End Text.
Edelman